

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 5, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP1171

Cir. Ct. Nos. 2012TR4195
2012TR4196

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

COUNTY OF WASHINGTON,

PLAINTIFF-RESPONDENT,

V.

JOSEPH HARVEY BINGEN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Washington County: JAMES K. MUEHLBAUER, Judge. *Affirmed.*

¶1 NEUBAUER, P.J.¹ Joseph Harvey Bingen appeals from a judgment of conviction for operating a motor vehicle while under the influence (OWI),

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version.

arguing that the trial court erred by denying his request for additional voir dire of prospective jurors in this civil traffic forfeiture case. We conclude from the record that the trial court adequately conducted voir dire. We affirm.

FACTS

¶2 Bingen was arrested for first-offense OWI, and his case was tried before a six-person jury. The trial court examined the jurors, asking them whether they knew any of the witnesses, parties, or attorneys and whether they could be impartial in an OWI case. The trial court asked whether anyone had an interest in the case and if anyone had a physical limitation that would affect his or her ability to hear the case. After initially acknowledging that the trial court had “hit everything” in its voir dire, defense counsel indicated, “I do have some questions I’d like to ask.” The trial court responded, “There is no selection at this time.” The trial court called a sidebar conference, after which the court directed the clerk to swear in the jury.

¶3 When the jury had left the courtroom, the trial court had defense counsel explain his objection regarding the limitation on voir dire. Defense counsel stated that the trial court had addressed statutory bias with the jurors, such as knowing a party or witness, but that counsel wanted to address “other areas of bias.”

I think the case law calls it objective bias and subjective bias. The questions that I mentioned at the side bar, I want to ask if anyone’s been a victim of a drunk driver or had close friends or family members that were victims of drunk drivers. I wanted to ask if anybody’s been convicted of a drunk driving.

The trial court responded, “I did ask if there was anybody for any reason who could not be fair and I think that is sufficient.”

DISCUSSION

¶4 Regarding our review of the trial court’s conduct of voir dire, “[a] trial court has broad discretion over how a voir dire examination is conducted, including the form and number of questions asked of prospective jurors.” *State v. Oswald*, 232 Wis. 2d 62, 85, 606 N.W.2d 207 (Ct. App. 1999). We will not disturb the trial court’s decision regarding voir dire unless there is a showing that the trial court misused its discretion. *Id.* at 85-86. Whether the trial court violated the mandate of a statute is a question of law we review de novo. *State v. Deborah J.Z.*, 228 Wis. 2d 468, 472, 596 N.W.2d 490 (Ct. App. 1999).

¶5 WISCONSIN STAT. § 345.43 grants the right to a six-person jury in traffic forfeiture cases, such as this first-offense OWI. Under § 345.43(3)(b), “[t]he judge shall permit voir dire examinations and challenges for cause.”

¶6 Bingen does not argue that voir dire in this civil case is a constitutional requirement. Rather, Bingen argues that the trial court violated WIS. STAT. § 345.43(3)(b) when it limited voir dire. Bingen maintains that the trial court prevented him from determining if any jurors were objectively biased because counsel was not able to ask if any jurors had been the victims of or convicted of drunk driving.

¶7 After asking if prospective jurors knew any of the parties, attorneys, or witnesses, the trial court asked the prospective jurors if any of them “for any reason has an interest in how this case is going to come out.” The trial court then concluded that there was no juror who “shouldn’t be on the jury for some other reason that wouldn’t show up in your jury questionnaire.” The trial court concluded, “So I’m satisfied that the six people who have been called forward can serve as our jury.”

¶8 While WIS. STAT. § 345.43 permits challenges for cause in this civil traffic forfeiture case, the trial court, after informing the jury of the nature of the case, asked if there were any jurors who could not serve fairly in an OWI trial. It was within the trial court's discretion to conduct voir dire as it did. We affirm the trial court's decision.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

